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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re Sebastian P., a Person Coming
Under the Juvenile Court Law.

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.P.,

Defendant and Appellant.

B304496

(Los Angeles County
Super. Ct. No. 19CCJP07051A

APPEAL from an order of the Superior Court of
Los Angeles County, Kim Nguyen, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kim Nemoy, Assistant
County Counsel, and Kimberly Roura, Deputy County Counsel,
for Plaintiff and Respondent.

Appellant M.P. challenges a dispositional order removing Sebastian P. from his custody and declining to place him with appellant, a presumed noncustodial parent, under Welfare and Institutions Code sections 360, subdivision (d), and 361.2, subdivision (a).¹ He argues the Los Angeles County Department of Children and Family Services (DCFS) did not make reasonable efforts to prevent Sebastian's removal from his custody, and there was insufficient evidence that an out-of-state placement with appellant would be detrimental. We conclude substantial evidence supports the juvenile court's dispositional order and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Family Background and Dependency History*

At the time of Sebastian's birth in 2015, his mother, E.R., was in a relationship with appellant, who was not Sebastian's biological father. Appellant signed the child's birth certificate and assumed the role of his father. The family resided in Utah. Mother and appellant ended their relationship in 2017, and mother relocated to California with Sebastian.

Mother had two older children with appellant, M.P., Jr. (born in 2007) and J.P. (born in 2008), who remained in Utah with appellant. M.P., Jr., had been a prior dependent of the court in 2007 due to mother's postpartum depression and suicide attempt, and a juvenile court found appellant failed to protect M.P., Jr., by leaving him in mother's care. Mother and appellant complied with court-ordered programs, and the court terminated its jurisdiction over M.P., Jr. in 2010.

¹ All further unspecified statutory references are to the Welfare and Institutions Code.

Sebastian's biological father, D.F., lived in California and had no involvement in Sebastian's life until Sebastian and mother moved to California.

B. Current Petition and DCFS Investigation

Four-year-old Sebastian came to the attention of DCFS in September 2019 because mother's teenage siblings reported that mother had given them a marijuana edible, which made them sick. During the DCFS investigation, mother denied the allegation but admitted to casual use of marijuana for anxiety and prescribed medication for her postpartum depression. During her relationship with appellant, she was a victim of domestic violence, which the children witnessed. However, she never sought a restraining order and was not concerned for her children's safety in appellant's care.

Mother explained that Sebastian had been diagnosed with autism and asthma, but was not receiving services. The expiration date of his inhaler was unknown. She claimed Sebastian's biological father was not involved in his life. Mother failed to show up for a drug test, and subsequently refused to reschedule it. The children's social worker (CSW) attempted to contact appellant in Utah and arrange a home visit by child protective services.²

Due to mother's unaddressed drug and mental health problems, her neglect of Sebastian, and his special needs as an autistic child of tender age, DCFS detained Sebastian. DCFS then learned that Sebastian had a paternal grandmother (PGM) who had been having weekly overnight visits with Sebastian.

² The record does not disclose what response DCFS received to its telephonic and email requests for a courtesy visit.

PGM disclosed that her son, D.F., was Sebastian's biological father but was unable to care for Sebastian because he was a full-time student. As DCFS prepared to place Sebastian with PGM, he threw a tantrum, became inconsolable, and bit the CSW.

PGM's home was clean, spacious, and well-stocked with food and toys. Sebastian had his own bedroom and lived with PGM, the paternal grandfather, and their two minor children. D.F. visited the home, but did not live there. Sebastian asked for mother every day.

A dependency petition filed on October 30, 2019 on Sebastian's behalf asserted jurisdiction under section 300, subdivisions (b) and (j), based on mother's failure to protect. The petition alleged that mother had a history of substance abuse and was a current abuser of marijuana (count b-1); and mother had mental and emotional problems, for which she was not taking her prescribed medication, and these mental and emotional problems led to M.P., Jr.'s prior dependency and placed Sebastian at risk of harm (counts b-2 and j-1).

At the detention hearing, Sebastian was removed from mother's custody and placed with PGM.

C. Jurisdiction/Disposition Report and Paternity

During its investigation, DCFS interviewed mother and learned that D.F. was initially unwilling to act as Sebastian's father, so appellant "stepped up" to fulfill that role. Mother was cooperative and knowledgeable about Sebastian's special needs, and desired to reunify with him as soon as possible. She described Sebastian as "severely autistic." He had been hospitalized in the past for self-harming behaviors and had been prescribed medication. Mother had not visited him during his detention because he could become "highly agitated" and

“dysregulated” by a visit from mother and the trauma of separation from her.

At the December 2019 hearing, appellant requested presumed father status.³ He claimed he had maintained contact with Sebastian by phone and video chat. Appellant’s counsel asked that DCFS “assess possible release of the child” to appellant. Minor’s counsel and DCFS expressed concern that Sebastian had not seen appellant “in some time.” The court declared appellant Sebastian’s nonoffending presumed father and ordered unmonitored electronic visits three times per week for two weeks, progressing eventually to in-person visits. In so ordering, the court noted Sebastian’s young age, his special needs, and his current “tumultuous” situation.

Six weeks later, PGM reported that appellant had only called Sebastian twice. During both FaceTime calls, Sebastian became highly agitated and refused to talk to appellant. DCFS had not assessed appellant’s home, and it was “not known” what resources were available in Utah to meet Sebastian’s special needs.

Sebastian was thriving in PGM’s care. He had formed an emotional bond with PGM and showed improvements in behavior and communication skills. Under a new routine, Sebastian was sleeping better and attending school regularly. PGM was willing to work with mother to help her implement the structure and

³ A man who holds a child out as his own and receives the child into his home is a “presumed father.” A biological father can be, but is not necessarily, a presumed father, and a presumed father can be, but is not necessarily, a biological father. Only a presumed father is entitled to reunification services and custody. (*In re Jerry P.* (2002) 95 Cal.App.4th 793, 801.)

care that Sebastian needed. According to PGM, D.F. visited Sebastian daily, and Sebastian often asked for “ ‘daddy.’ ”

D.F. expressed concern about mother’s mental health and its adverse effects on Sebastian. Appellant, however, expressed no concerns about mother’s ability to care for Sebastian. He believed her mental health issues were under control and said she was an “ ‘awesome mom.’ ”

DCFS concluded there was no evidence that mother was currently abusing drugs. However, she had not completed a mental health assessment, was not receiving individual counseling, failed to maintain contact with DCFS, and was not taking her medication as prescribed. Thus, it recommended Sebastian remain placed with PGM and proposed a case plan for all three parents that included parenting classes for children with autism.

D. Adjudication and Disposition Hearing

At the January 21, 2020 adjudication hearing, the court found D.F. to be Sebastian’s biological father. DCFS submitted its investigation reports as evidence, and no testimony was heard.

The court sustained counts b-2 and j-1 based on mother’s mental health and past neglect of Sebastian’s sibling, M.P., Jr., but dismissed count b-1 based on her alleged drug use.

As to disposition, appellant requested that Sebastian be released to his custody, and objected to the proposed case plan. Sebastian’s counsel asked the court to make a finding that placement with appellant would be detrimental under section 361.2, subdivision (a). Counsel argued that Sebastian had stabilized in his sleep routine, school attendance, and medication regimen while in PGM’s care, and his limited contact with

appellant caused him distress. There were “real concerns,” both physical and emotional, if Sebastian were “uprooted” to another state with a new caregiver. D.F.’s counsel joined the request for a detriment finding, noting that D.F. desired a father-son relationship with Sebastian.

The court found “clear and convincing evidence” of “substantial risk of detriment if the child is left in the care and custody of any parent” and “no services . . . available to prevent removal.”⁴ The court noted Sebastian had special needs that were “very high” and intense, requiring a stable, committed caretaker. Sebastian’s extreme reaction to appellant’s two attempted contacts “[spoke] volumes” that he could not safely be released to appellant. Thus, the court denied appellant’s request.

The court ordered reunification services for all three parents. Under the court-ordered case plan for appellant, DCFS was to assess what services were available to support Sebastian in Utah. Appellant and D.F. were ordered to participate in parenting classes for children with special needs and weekly visits with Sebastian.

Appellant appealed the dispositional order.

DISCUSSION

The court’s dispositional order removed Sebastian from his parents’ custody and declined to place him with appellant. Appellant challenges the order on the grounds that DCFS failed to identify “reasonable means” to prevent removal as required by

⁴ The minute order stated it was “reasonable and necessary to remove the child from the parents” and DCFS “made reasonable efforts to prevent removal but there are no services available to prevent further detention.”

section 361, subdivision (d), and there was insufficient evidence to support the detriment finding under section 361.2, subdivision (a). We affirm.

A. *Substantial Evidence Supports the Removal Order Under Section 361, Subdivision (d).*

Appellant contends the dispositional order must be reversed because DCFS failed to identify “reasonable means” to avoid removing Sebastian from appellant’s custody.

The juvenile court has the power to restrict the custody of a parent with whom a child does not reside, “and thus effectively remove the child from the noncustodial parent.” (*In re Julien H.* (2016) 3 Cal.App.5th 1084, 1090.) Section 361, subdivision (d) states in relevant part: “A dependent child shall not be taken from the physical custody of his or her parents . . . with whom the child did not reside at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence that there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child for the parent . . . to live with the child or otherwise exercise the parent’s . . . right to physical custody, and there are no reasonable means by which the child’s physical and emotional health can be protected without removing the child from the child’s parent’s . . . physical custody.” (§ 361, subd. (d).) In assessing the risk of danger to the child, the court “ ‘may consider a parent’s past conduct as well as present circumstances.’ ” (*In re A.S.* (2011) 202 Cal.App.4th 237, 247, disapproved on other grounds by *Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1010, fn. 7.)

We review an order removing a child from parental custody for substantial evidence. (*In re A.R.* (2015) 235 Cal.App.4th 1102, 1116.) “[W]hen reviewing a finding that a fact has been proved

by clear and convincing evidence, the question before the appellate court is whether the record as a whole contains substantial evidence from which a reasonable fact finder could have found it highly probable that the fact was true.” (*Conservatorship of O.B.*, *supra*, 9 Cal.5th at pp. 995–996.) In making this assessment, we “view the record in the light most favorable to the prevailing party below and give due deference to how the trier of fact may have evaluated the credibility of witnesses, resolved conflicts in the evidence, and drawn reasonable inferences from the evidence.” (*Id.* at p. 996.)

The juvenile court found clear and convincing evidence there would be “substantial danger” to Sebastian if he were placed in appellant’s custody, and there were “no services . . . available to prevent [his] removal.” (See § 361, subd. (d).) The court considered Sebastian’s special needs and vulnerabilities as a severely autistic child, his history of self-harming behaviors, his heightened need for stability and consistency, his recent acclimation to a new environment, and the progress he had made under the attentive care of PGM. The court was understandably concerned that abruptly uprooting Sebastian from a home he had newly settled into would be physically and emotionally traumatic for him, especially in light of Sebastian’s demonstrated unfamiliarity with appellant, who made little effort to be a consistent, parental presence. On the other hand, Sebastian had formed a strong bond with PGM, he was thriving in his new home, and he maintained regular visits with his biological parents, who desired to reunify with him. PGM was willing to support mother in creating a healthy long-term environment for Sebastian. Under these circumstances, substantial evidence supports the court’s findings that Sebastian would face

“substantial danger” in appellant’s custody, and there were no “reasonable means” to protect him without restricting appellant’s exercise of his right to custody.

Appellant challenges the juvenile court’s “reasonable means” finding, noting DCFS’s failure to investigate appellant’s home or services available in Utah to help appellant manage Sebastian’s special needs. He relies on *In re Ashly F.* (2014) 225 Cal.App.4th 803, which is distinguishable. There, the court removed the children from the home both parents shared, without determining if “reasonable means” existed to prevent the children’s removal under section 361, subdivision (c)(1). (*In re Ashly F.*, at pp. 807–808; see § 361, subd. (c)(1).) The court found ample evidence of “reasonable means” to protect the children and prevent their removal that were never considered, such as the parents’ participation in parenting classes and unannounced home visits by DCFS. (*In re Ashly F.*, at p. 810.)

In contrast, Sebastian was removed from a noncustodial parent pursuant to section 361, subdivision (d), and the court concluded there were no “reasonable means” to prevent his removal based on appellant’s noncompliance with his case plan and lack of involvement in Sebastian’s life. The record indicates that DCFS evaluated appellant’s suitability for custody and attempted to help him reestablish a parental relationship with Sebastian. DCFS interviewed appellant, assessed his dependency history and adherence to visitation orders, and recommended focused parenting classes. No further inquiry into appellant’s home or services in Utah was necessary to determine that appellant showed little interest in being Sebastian’s parent. Appellant disregarded the court’s preliminary order that he maintain “regular frequent [electronic] contact” with Sebastian

before progressing to in-person visits, in consideration of his special needs. Appellant attempted electronic contact with Sebastian only twice in six weeks, and both attempts were distressing to Sebastian. There is no indication that appellant played an active part in Sebastian's care, or maintained any parental role after 2017. Appellant was unaware of mother's mental health struggles, and unconcerned for Sebastian's safety in her care. In addition, appellant objected to his case plan based on his nonoffending status. His resistance to receiving training on how to care for Sebastian's special needs further undermines the effectiveness of any "reasonable means" available to protect Sebastian in appellant's care. Any resources in Utah would not minimize the devastating impact of losing the stability Sebastian found with PGM, D.F., and mother.

To the extent the court did not articulate a factual basis for its findings, any error was harmless. "[C]ases involving a court's obligation to make findings regarding a minor's change of custody or commitment have held the failure to do so will be deemed harmless where 'it is not reasonably probable such finding, if made, would have been in favor of continued parental custody.' " (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218; *In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1137, disapproved on other grounds in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.) In our view, it is not reasonably probable the trial court would have ruled in appellant's favor by finding "reasonable means" to protect Sebastian and alleviate the damage of displacing him from his home and family in California. Sebastian had demanding special needs, and appellant demonstrated little interest in meeting those specialized needs.

Thus, we conclude that substantial evidence supports the removal order under section 361, subdivision (d).

B. Substantial Evidence Supports the Detriment Finding Under Section 361.2, Subdivision (a).

Appellant challenges the dispositional order declining to place Sebastian in his custody on the ground that insufficient evidence supports the finding of detriment under section 361.2, subdivision (a).

Section 361.2, subdivision (a) provides: “If a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.” (§ 361.2, subd. (a).)

Only clear and convincing evidence can establish the necessary detriment. (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426 (*Luke M.*)). In making this finding, we review the entire record in the light most favorable to the trial court’s order to determine whether substantial evidence supports a finding of “net harm” to the child. (*Id.* at pp. 1425–1426.)

There is substantial evidence that Sebastian would suffer significant emotional and physical detriment if forced to move out of state to live with appellant. As we have discussed, the juvenile court found “substantial danger” to Sebastian if appellant exercised his right to custody. Although the language of section 361, subdivision (d), is not identical to section 361.2, subdivision

(a), it is functionally similar—that is, in most cases in which a court finds “substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child” in a parent’s custody, it will also find “that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.” (Compare § 361, subd. (d) and § 361.2, subd. (a); see *In re A.A.* (2012) 203 Cal.App.4th 597, 610 [“It is illogical to require a court to consider placing a child with a noncustodial parent who has already been determined to pose a substantial danger” to the child]; *In re D’Anthony D.* (2014) 230 Cal.App.4th 292, 303 [“we [cannot] ignore the similarity between these statutes’ mandatory findings”].) Therefore, the substantial evidence supporting the juvenile court’s “substantial danger” finding equally supports a finding of “detriment.”

Appellant’s cited cases do not support his contention that a “lack of contact between father and son” cannot be “a basis for finding detriment.” Rather, *In re K.B.* (2015) 239 Cal.App.4th 972 explained that a child’s lack of contact with the noncustodial parent cannot be the *sole* basis for finding detriment. (*Id.* at p. 981 [affirming placement with noncustodial father].) In any event, unlike Sebastian, the child in *In re K.B.* had consistent contact with his father after dependency proceedings began, enjoyed a close relationship with him, and desired to live with him. (*Id.* at pp. 975, 980.) Similarly, in *In re Liam L.* (2015) 240 Cal.App.4th 1068, the minors had “mixed (and some positive) feelings” about moving out of state with their father, and “exhibited no distress” about leaving their current placement. (*Id.* at pp. 1087, 1089.) Lastly, *In re Adam H.* (2019) 43 Cal.App.5th 27 supports our holding. There, the appellate court

concluded the juvenile court had erred by failing to determine whether placement of a teenage child, who had mental health needs, with his noncustodial father would cause “emotional detriment should he be forced against his will to move into father’s home, away from his current home and school where he is doing well.” (*Id.* at p. 33.) In contrast, Sebastian’s emotional well-being was a central part of the juvenile court’s detriment analysis in the present case. Further, none of appellant’s cited cases involve a child of tender years with significant special needs, like Sebastian, who would surely be less resilient and more susceptible to trauma if relocated to a new, unfamiliar environment. (See *Luke M.*, *supra*, 107 Cal.App.4th at p. 1426 [affirming detriment finding that moving children out of state with noncustodial father would have “devastating emotional impact”].) Thus, substantial evidence supports the court’s dispositional findings.

DISPOSITION

The dispositional order is affirmed.

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EDMON, P. J.

We concur:

EGERTON, J.

DHANIDINA, J.